

In Re Interest Mya C., et al.

Caselaw No.

No. A-15-204

Filed on

Tuesday, November 17, 2015

SUMMARY: In re Interest of Mya C., et al. 23 Neb. App. 383 No. A-15-204 Filed on November 17, 2015 The father, David M. Sr., appealed from an order terminating his parental rights to his children LaToya M. and David M. Jr., by the Lancaster County Juvenile Court. The termination was reversed and remanded for further proceedings.

The case began as an educational neglect case against David's partner, Ann B., regarding her child, Mya. Ann had another child, Tyrone, and the couple had a young daughter, LaToya. After intensive family preservation, DHHS believed that all the children in Ann and David's home were neglected due to a dirty home, the children in dirty clothes, and David using verbal, emotional, and/or physical abuse to the children. DHHS filed a petition for temporary custody of the children, which was granted on February 14, 2013, and both Ann and David pled no contest.

In April 2013, David Jr. was born and removed from Ann and David. Ann relinquished her rights to all four children, therefore this appeal applied only to David's rights to LaToya and David Jr.

On June 2013, David was ordered to participate in mental health counseling, family therapy, budget management, and supervised parenting time. In 2014, the plan was amended to add that he follow the recommendations by the children's doctors, as they both had ongoing medical issues. David's therapist testified at the hearing. He said that David had made good progress on his issues and that in his professional opinion, he could be a competent parent. David also had a parenting partner who worked with him on budgeting and he completed a 6-week parenting class. During the pendency of the case, David worked as a dishwasher at a hotel, where his schedule was somewhat erratic. As such, he sometimes had to miss his regularly scheduled visitation, but for the most part, he did participate in it.

Three caseworkers testified at the termination hearing about ongoing issues in the case, including anger with caseworkers, lack of funds to buy things the children needed, and David's work causing him to miss visits or therapy sessions.

David's visitation worker testified that since June 2014, David has had an appropriate home for the children to visit, he has provided for all of their needs and following the doctor's recommendations, he plays appropriately, and is a loving father. He said he believes David has the parenting skills needed to parent the children alone. However, visitation had not progressed from supervised because David did miss visits occasionally.

The Juvenile Court terminated David's parental rights based on Neb. Rev. Stat. §§ 43-292(2), (6), and (7). It also found that termination was in the best interests of the children and that David was an unfit parent.

The Court of Appeals reviews the case de novo on the record, with deference to the trial court's ability to observe witnesses. *In re Interest of Karlie D.*, 283 Neb. 581 (2012). The standard of review for a termination is clear and convincing evidence that one or more of the statutory grounds has been met and that termination is in the best interests of the children. *In re Interest of Aaron D.*, 269 Neb. 249 (2005). The Court of Appeals found that statutory grounds existed for termination, but that the State did not prove that it was in the best interests of the children to terminate.

Neb. Rev. Stat. § 43-292(7) requires that a child be in an out-of-home placement for 15 out of the last 22 months to terminate parental rights. Both children were in out of home care for at least that amount of time, so this section was proved. Neb. Rev. Stat. § 43-292(2) requires that there can be termination where "[t]he parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection." Evidence presented at the hearing from David's own testimony and that of visitation reports is sufficient for this prong. However, the Court of Appeals found that there was not sufficient evidence to prove Neb. Rev. Stat. § 43-292(6), which involves failure to correct adjudicated conditions. Testimony from David's therapist and visitation worker showed that he was able to correct the underlying issues.

Although statutory grounds exist to terminate David's rights, there can only be termination if the Court finds it is in the children's best interests. The Court of Appeals relies on the rebuttable presumption that the best interests of a child are served by having a relationship with his or her parent and that this presumption can only be overcome if a parent is proven to be unfit. *In re Interest of Nicole M.* 287 Neb. 685 (2014). The Court finds that unfitness is not the same as the statutory grounds for termination because the statutory grounds focus on the past conduct of the parent, while the best interests focus on the future well-being of the child. *Kenneth C. v. Lacie H.*, 286 Neb. 799 (2013). In this case, none of the caseworkers testified that it would be in the best interests of the children to terminate David's rights, focusing instead on the children's need for permanency.

The Court of Appeals recognizes that, "the law does not require perfection of a parent. Instead we should look for the parent's continued improvement in parenting skills and a beneficial relationship between parent and child." Citing *In re Interest of Aaron D.*, 269 Neb. 249 (2005). Because David had substantially complied with his court plan and is making progress, the Court finds that he is not an unfit parent and therefore that termination is not in the best interests of the children.
